

ASSEMBLY BILL

No. 3023

Introduced by Assembly Member Nunez

February 24, 2006

An act to add Section 7662 to, and to add Article 7.3 (commencing with Section 7665) to Chapter 1 of Division 1 of, the Public Utilities Code, relating to railroads.

LEGISLATIVE COUNSEL'S DIGEST

AB 3023, as introduced, Nunez. Railroads: safety.

(1) The existing Federal Rail Safety Act (FRSA) authorizes the Secretary of Transportation to prescribe regulations and issue orders for railroad safety and requires the Secretary of Homeland Security, when prescribing a security regulation or issuing a security order that affects the safety of railroad operations, to consult with the Secretary of Transportation. The FRSA provides for state participation in the enforcement of the safety regulations and orders issued by the Secretary of Transportation or Secretary of Homeland Security, pursuant to an annual certification, and authorizes the respective secretaries to make an agreement with a state to provide investigative and surveillance activities. The FRSA provides that to the extent practicable, laws, regulations, and orders related to railroad safety and laws, regulations, and orders related to railroad security are required to be nationally uniform, but authorizes a state to adopt or continue in force a law, regulation, or order related to railroad safety or security until the Secretary of Transportation (with respect to railroad safety matters), or the Secretary of Homeland Security (with respect to railroad security matters), prescribes a regulation or issues an order covering the subject matter of the state requirement. A state is additionally authorized to adopt or continue in force an additional or

more stringent law, regulation, or order related to railroad safety or security, when necessary to eliminate or reduce an essentially local safety or security hazard, that is not incompatible with a federal law, regulation, or order, and that does not unreasonably burden interstate commerce.

Existing law establishes the safety division of the Public Utilities Commission. The safety division is responsible for inspection, surveillance, and investigation of the rights-of-way, facilities, equipment, and operations of railroads and public mass transit guideways, and for enforcing state and federal laws, regulations, orders, and directives relating to transportation of persons or commodities, or both, of any nature or description, by rail. Existing law requires the commission to require every railroad corporation operating in this state to develop a protocol for rapid communications with certain entities in an endangered area if there is a runaway train or any other uncontrolled train movement that threatens public health and safety. Existing law requires a railroad corporation to promptly notify those entities if there is a runaway train or other uncontrolled train movement, in accordance with the communications protocol developed.

This bill would impose certain requirements on a railroad corporation regarding signage, markers, and flagging systems. The bill would require a railroad corporation to notify the commission and the collective bargaining representative of any affected employee of any new utilization of remote control locomotives in the state, on or after January 1, 2007. The bill would require a railroad corporation to provide immediate notification to the Office of Emergency Services of specified accidents, incidents, and other events that are required to be reported to the Federal Railroad Administration's National Response Center.

(2) This bill would enact the Local Community Rail Security Act of 2006. The act would require every operator of rail facilities, by July 1, 2007, to provide to local and state law enforcement personnel, emergency personnel, transportation officials and other first responders, a risk assessment of all rail facilities in the state that includes specified information. The act would require every rail operator, by January 1, 2008, to develop and implement an infrastructure protection program to protect rail infrastructure in the state from acts of sabotage, terrorism, or other crimes. The act would require the commission to review the infrastructure protection

program and would authorize the commission to order a rail operator to improve, modify, or change its program. The act would authorize the commission to fine a rail operator up to \$50,000 per day for failure to comply with these requirements or an order of the commission. The act would adopt specific requirements for facilities that handle cargo that passes within 15 miles of a community facility and would authorize the commission to fine a rail operator up to \$50,000 per day for failure to comply with these requirements or an order of the commission. The act would require that rail operators provide communications capability that can accomplish certain tasks. The act would prohibit a rail operator or other covered person from undertaking any act to punish an employee who reports a violation of the act and provides that an employee subjected to punishment for reporting a violation may seek civil damages of up to \$1,000,000, in addition to any other remedies the court deems appropriate.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7662 is added to the Public Utilities
2 Code, to read:
3 7662. (a) (1) A railroad corporation shall place appropriate
4 signage to notify an engineer of an approaching grade crossing,
5 consistent with federal law.
6 (2) Whistle post signs shall be deemed to satisfy this
7 requirement.
8 (b) A railroad corporation shall utilize flagging systems and
9 follow main line flag rules in a manner consistent with its
10 adopted general code of operating rules and federal law. All flags
11 shall be readily visible and easily recognizable to the crews on
12 both passenger and freight trains.
13 (c) A railroad corporation shall provide milepost markers to
14 train crews at accurate one-mile intervals. The markers shall be
15 readily visible to the locomotive engineer within the locomotive
16 cab, and shall be kept in good repair and replaced when
17 necessary.
18 (d) A railroad corporation shall place whistle signs to the right
19 of the main track in the direction of approach, exactly
20 one-quarter mile from the entrance to any grade crossing as a

1 point of reference for locomotive engineers who blow the whistle
2 and ring the bell for these grade crossings as a warning to the
3 public. The signs, which shall consist of an “X” on a square plate
4 mounted on a post, shall be readily visible to a locomotive
5 engineer within the locomotive cab, shall be kept in good repair,
6 and shall be replaced when necessary.

7 (e) A railroad corporation shall place permanent speed signs to
8 the right of the track in the direction of approach, two miles in
9 advance of the point where the speed is either increased or
10 decreased for both passenger and freight trains. The signs shall
11 be readily visible to a locomotive engineer within the locomotive
12 cab, shall be kept in good repair, and shall be replaced when
13 necessary.

14 (f) A railroad corporation shall notify the commission and the
15 collective bargaining representative of any affected employee of
16 any new utilization of remote control locomotives in the state, on
17 or after January 1, 2007.

18 (g) A railroad corporation shall provide immediate notification
19 to the Office of Emergency Services of accidents, incidents, and
20 other events, concurrent with those provided to the Federal
21 Railroad Administration’s National Response Center, as required
22 by Part 225.9 of Title 49 of the Code of Federal Regulations.

23 SEC. 2. Article 7.3 (commencing with Section 7665) is added
24 to Chapter 1 of Division 4 of the Public Utilities Code, to read:
25

26 Article 7.3. Local Community Rail Security Act of 2006
27

28 7665. (a) This article shall be known, and may be cited, as
29 the Local Community Rail Security Act of 2006.

30 (b) The Legislature declares that the purpose of this act is to
31 provide for the security and safety of local communities and local
32 community facilities, to protect local communities from
33 transportation practices that fail to secure rail facilities and
34 equipment from the threat of terrorism, and to ensure proper
35 communication between the owners and operators of rail
36 facilities and equipment with local and state first responders.

37 (c) The requirements of this article shall apply to rail
38 operators, any contractors or subcontractors working on the
39 facilities of the rail operator, and any other individual or
40 corporation performing work on rail facilities in the state. All

1 employees of railroad contractors or subcontractors, and any
2 other individual or corporation performing work on rail facilities
3 in the state, shall receive training adequate to make them as well
4 trained as employees of a rail operator, and shall be required to
5 undergo the same background, skills, and fitness for duty checks
6 as employees of the rail operator.

7 7665.2. By July 1, 2007, every operator of rail facilities shall
8 provide to local and state law enforcement personnel, emergency
9 personnel, transportation officials and other first responders, a
10 risk assessment of all rail facilities in the state. The risk
11 assessment shall describe:

- 12 (a) All rail facilities and their functions.
- 13 (b) The types of cargo that move through the facilities.
- 14 (c) Any hazardous cargo that moves through the facilities,
15 including the quantities of hazardous cargo.
- 16 (d) Any storage of hazardous cargo in rail facilities.
- 17 (e) The distance from rail facilities that transport or store
18 hazardous cargo to community facilities, including schools,
19 hospitals, and nursing homes.
- 20 (f) A description of the practices of the rail operator to prevent
21 acts of sabotage, terrorism or other crimes on rail facilities.
- 22 (g) All training programs that the rail operator requires for its
23 employees.
- 24 (h) The emergency response procedures of the rail operator to
25 deal with acts of sabotage, terrorism, or other crimes.
- 26 (i) The procedures of the rail operator to communicate with
27 local and state law enforcement personnel, emergency personnel,
28 transportation officials, and other first responders, in the event of
29 acts of sabotage, terrorism, or other crimes.

30 7665.4. (a) By January 1, 2008, every rail operator shall
31 develop and implement an infrastructure protection program to
32 protect rail infrastructure in the state from acts of sabotage,
33 terrorism, or other crimes.

34 (b) The infrastructure protection program shall provide for the
35 security of all critical infrastructure, including all points of
36 vulnerability of the rail system that handle hazardous cargo,
37 bridges, tunnels, and signal systems, and shall do all of the
38 following:

- 39 (1) Provide notice to state and local law enforcement
40 personnel, emergency personnel, transportation officials, and

1 other first responders of the location, size, function, and
2 importance of the critical infrastructure.

3 (2) Provide and describe methods for ensuring the protection
4 of critical infrastructure from acts of sabotage, terrorism, or other
5 crimes, including, at a minimum, 24-hour surveillance,
6 monitoring, and protection of the facilities.

7 (3) Provide training to personnel of the railroad operator to
8 ensure that the railroad personnel are trained and equipped to
9 prevent acts of sabotage, terrorism, or other crimes, and to
10 respond in the event of acts of sabotage, terrorism, or other
11 crimes.

12 (c) The infrastructure protection program shall include
13 regularly scheduled inspections by personnel trained to determine
14 the condition of the rail facilities and the vulnerability of the rail
15 facilities to acts of sabotage, terrorism, of other crimes, of all rail
16 facilities, including rights-of-way, yards, and other facilities, that
17 handle hazardous cargo that move within 15 miles of community
18 facilities, including schools, hospitals, and nursing homes.

19 (d) Each rail operator in the state shall provide to the
20 commission, local and state law enforcement personnel,
21 emergency personnel, transportation officials and other first
22 responders a copy of its infrastructure protection program.

23 (e) The infrastructure protection program shall be updated by
24 the rail operator at least once every year, and the updated plan
25 submitted to local and state law enforcement personnel,
26 emergency personnel, transportation officials and other first
27 responders.

28 (f) The commission shall review the infrastructure protection
29 program and may order a rail operator to improve, modify, or
30 change its program to comply with the requirements of this
31 article.

32 (g) The commission may fine a rail operator up to fifty
33 thousand dollars (\$50,000) per day for failure to comply with the
34 requirements of this section or an order of the commission
35 pursuant to this section.

36 7665.6. (a) Every rail operator shall, for all facilities that
37 handle cargo that passes within 15 miles of a community facility,
38 do all the following:

39 (1) Secure all facilities that handle or store hazardous
40 materials by providing adequate security personnel.

1 (2) Store hazardous materials only in secure facilities designed
2 for storage, which shall not include rights-of-way.

3 (3) Shall not leave locomotive equipment running while
4 unattended, or leave any unattended locomotive equipment
5 unlocked.

6 (4) Shall have adequate personnel qualified to operate trains
7 available to assist, replace, or relieve train operators needing
8 assistance.

9 (5) Shall ensure that the cabs of occupied locomotives are
10 secured from hijacking, sabotage, or terrorism.

11 (6) Shall not use remote control locomotives to move
12 hazardous materials.

13 (7) Shall secure remote control devices to prevent access to
14 those devices by unauthorized personnel.

15 (8) Shall ensure that all employees of a rail facility that
16 transport hazardous materials within 15 miles of a community
17 facility receive training relative to security, shipment of
18 hazardous materials, and terrorism prevention at least once every
19 12 calendar months.

20 (b) The commission may fine a rail operator up to fifty
21 thousand dollars (\$50,000) per day for failure to comply with the
22 requirements of this section or an order of the commission
23 pursuant to this section.

24 7665.8. Every rail operator shall provide communications
25 capability that can accomplish all of the following:

26 (a) Timely alerting local and state law enforcement personnel,
27 emergency personnel, transportation officials and other first
28 responders in the event of sabotage, terrorism, or other crimes.
29 Railroad radios do not satisfy the requirements of this section.

30 (b) Timely provide bridge tenders on moveable bridges the
31 ability to alert local and state law enforcement personnel,
32 emergency personnel, transportation officials and other first
33 responders in the event of sabotage, terrorism, or other crimes.

34 (c) Notify rail workers of the local or national threat level for
35 the rail industry.

36 7666. No rail operator or any other person covered by this
37 article may act to punish an employee who reports a violation of
38 this article. An employee against whom a punitive action is taken
39 may seek civil damages of up to one million dollars (\$1,000,000)
40 from any employer that acts to punish an employee who reports a

1 violation of this article, in addition to any other remedies the
2 court deems appropriate.
3 7667. The provisions of this article are severable. If any
4 provision of this article or its application is held invalid, that
5 invalidity shall not affect other provisions or applications that can
6 be given effect without the invalid provision or application.